

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HUMBERTO ORTIZ
Plaintiff,

V.

FIESTA MART, LLC

Defendant.

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

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TO THE UNITED STATES DISTRICT COURT:

Defendant FIESTA MART LLC, pursuant to 28 U.S.C. §§1441 and 1332, provides notice of removal of this action styled *Humberto Ortiz v. Fiesta Mart LLC*, Cause No. 2021-24773, currently pending in the 11th Judicial District Court of Harris County, Texas, and in support thereof, respectfully shows unto this Court as follows:

1. Plaintiff Ingrid Fernandez filed her Original Petition on April 26, 2021, claiming damages from a slip and fall. Plaintiff served Defendant with the citation on April 29, 2021; therefore, this notice is timely under 28 U.S.C. § 1446(b).

2. Pursuant to 28 U.S.C. §1446 and the Local Rules of the United States District Court for the Southern District of Texas, attached are the following:

- a. All executed process in the case (Exhibit A);
- b. Pleadings asserting causes of action and all answers to such pleadings (Exhibit B);
- c. All orders signed by the state judge (none);
- d. The docket sheet (none);
- e. An index of matters being filed (Exhibit C);
- f. A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit D).

These documents represent all that are presently available as required.

4. The District Courts of the United States have original jurisdiction over this action by reason of diversity of citizenship between the parties. 28 U.S.C. §1332. Plaintiff's Original Petition alleges that Plaintiff Humberto Ortiz is a resident of Texas, and therefore is a citizen of the state of Texas. Although Defendant Fiesta Mart LLC, is a limited liability company organized under the laws of Texas, its sole member is Bodega Latina Corp., a Delaware corporation with its principal place of business, or its "nerve center" in California. *See* Exhibit E. Defendant Fiesta Mart LLC's citizenship as an LLC is determined by the citizenship of its members.¹ A corporation, such as Bodega Latina Corp., is deemed to be a "citizen" of the state where it maintains its principal place of business (its "nerve center") and the state of its incorporation.² Therefore, Defendant is a citizen of the states of Delaware and California, the principal place of business and the state of incorporation of Fiesta Mart LLC's sole member, Bodega Latina Corp.

5. Plaintiff's Original Petition in the state court seeks damages up to \$100,000, and thus the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

6. Removal of this cause of action is proper under 28 U.S.C. §1441. It is a civil action brought in state court and the District Courts of the United States have original jurisdiction over this action under 28 U.S.C. §1332, since the plaintiff and the defendant are diverse in citizenship.

7. As required by 28 U.S.C. §1441, the 11th Judicial District Court of Harris County, Texas falls within the geographical purview of this Court, and thus, venue is proper in the United States District Court of the Southern District of Texas, Houston Division.

¹ *See e.g., Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

² *See* 28 U.S.C. §1332(c)(1); *see also, Hertz Corp. v. Friend*, 559 U.S. 77, 130 S. Ct. 1181, 1185-86 (2010).

8. Written notice of the filing of this Notice of Removal is being promptly given to Plaintiff and a notice of Filing of Notice of Removal is promptly being filed with the 11th District Court in Harris County, Texas, as required by 28 U.S.C. §1446(d).

WHEREFORE, PREMISES CONSIDERED, Defendant Fiesta Mart, LLC prays that the state action now pending in 11th District Court in Harris County, Texas, be removed to this Court, and for any further relief to which Defendant is justly entitled.

Respectfully submitted,
MEHAFFYWEBER, P.C.

By:/s/Maryalyce W. Cox
Maryalyce W. Cox
State Bar No. 24009203
Sam Lombard
State Bar No. 24104617
One Allen Center
500 Dallas, Suite 2800
Houston, Texas 77002
Telephone - (713) 655-1200
Telecopier - (713) 655-0222
maryalycecox@mehaffyweber.com

ATTORNEYS FOR DEFENDANT
FIESTA MART LLC

CERTIFICATE OF SERVICE

In addition to e-filing, this is to certify that a true and correct copy of the above and foregoing instrument has been forwarded by Certified Mail, return to receipt requested, to all counsel of record on this the 28th day of May, 2021 pursuant to both the Texas Rules of Civil Procedure and the Federal Rules of Civil Procedure. .

Maryalyce W. Cox
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